

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: DAVIS et al.
Title: DIGITALLY MARKED OBJECTS AND
PROMOTIONAL METHODS
Appl. No.: 09/697,009
Filing Date: 10/25/2000
Examiner: Raquel Alvarez
Art Unit: 3682
Confirmation Number: 4530

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR
PATENT APPLICATION UNDER 37 C.F.R. §1.705(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants have calculated PTA for the captioned patent application and have determined that the patent is entitled to 3151 days of Patent Term Adjustment, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702, 1.703 and 1.704:

(a) Total PTO delay: 3346 days

(b) Total Applicant delay: 195 days

Final PTA Determination under 37 CFR §1.703(f): 3151 days

In accordance with 1.705(b)(2)(ii), the relevant dates as specified in §1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are clearly represented in the attached PTA Calculation.

The relevant dates where the applicant is not in agreement with the PTO's determination are discussed in more detail below.

Applicant believes this discrepancy occurred as a result of the PTO's failure to include 406 days of additional PTA accumulated in applicant's favor based on the provisions of 37 C.F.R. §§ 1.702(b)(1) and 1.703(b)(1), wherein PTA begins to accumulate in applicant's favor on the day after the commencement of three years from the filing date.

A Request for Continued Examination was filed in the application prior to allowance, and Patent Term Adjustment accordingly stopped accruing under 37 C.F.R. §1.703(b) on 08/19/2011. This PTA component was accordingly "ripe" at the time of allowance and accordingly could have been incorporated into the PTO's determination of PTA.

37 C.F.R. §1.705(d) states that "Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues." As the above-identified issue could arguably be raised under paragraph (b), the applicant is filing this request for reconsideration under an abundance of caution, in the knowledge that the PTO does not include patent term adjustment resulting from 37 C.F.R. §1.703(b) in its PTA calculations at allowance, even if PTA has stopped accruing due to the filing of an RCE.

In accordance with §1.705(b)(2)(iv)(A), the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 are clearly represented in the attached PTA Calculation.

Applicants therefore respectfully request that the patent be accorded 3151 days PTA.

Fees in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request are being paid by credit card via EFS-Web.

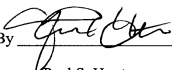
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date November 29, 2011

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By  _____
Paul S. Hunter
Attorney for Applicant
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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number:098888-1561

Application Number:09/697009

Patent Number:N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	10/25/2000	0		
	14 month From Application date	12/25/2001	426		
Edit Delete	Restriction Requirement	05/02/2003	919	493	
Edit Delete	Restriction Requirement Response Received at PTO	07/29/2003	1,007		
Edit Delete	IDS Rcv'd at PTO - No Statement under 1.704(d)	09/15/2003	1,055		48
Edit Delete	Final Office Action	10/21/2003	1,091		
	3 Year Period Starts	10/25/2003	1,095		
Edit Delete	Final Office Action Response Received at PTO	12/19/2003	1,150		
	Final Office Action + 3 months	01/21/2004	1,183		
Edit Delete	Advisory Action	01/27/2004	1,189		
Edit Delete	Notice of Appeal Received at PTO	03/24/2004	1,246		63
Edit Delete	Appeal Brief Received at PTO	05/24/2004	1,307		1
Edit Delete	IDS Rcv'd at PTO - Statement Under 1.704(d)	05/26/2004	1,309		2
Edit Delete	Non-Final Office Action	08/13/2004	1,388		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/12/2004	1,479		
Edit Delete	IDS Rcv'd at PTO - No Statement under 1.704(d)	01/28/2005	1,556		77
Edit Delete	Final Office Action	01/30/2005	1,558		
Edit Delete	Final Office Action Response Received at PTO	03/31/2005	1,618		
Edit Delete	Advisory Action	04/26/2005	1,644		
	Final Office Action + 3 months	04/30/2005	1,648		
	3 Year Period Paused	05/04/2005	1,652	557	
Edit Delete	Notice of Appeal Received at PTO	05/05/2005	1,653		5
	Appellate review by the Board of Patent Appeals and Interferences Commences	05/05/2005	1,653		
Edit Delete	Appeal Brief Received at PTO (Non-Compliant)	10/07/2005	1,808		
Edit Delete	Appeal Brief Received at PTO	03/16/2006	1,968		
CLOSE WINDOW	Appeal Brief Filed SET FOR CASE	07/16/2006	2,090		

Edit Delete	Examiner's Answer Mailed	07/24/2007	2,463	(373)
Edit Delete	Appeal Decided by Appeal Board; Some/All Rejections Reversed	03/16/2011	3,794	2142
	3 Year Period Resumed	03/17/2011	3,795	
Edit Delete	Notice of Allowance	05/25/2011	3,864	
	3 Year Period Stopped	08/18/2011	3,949	154
Edit Delete	Request For Continued Examination (including amendment)	08/19/2011	3,950	
Edit Delete	Notice of Allowance	09/01/2011	3,963	
	Projected Patent Grant Date	03/13/2012	4,157	

Totals:

3,346 195

PTA:

3151

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Version: 3.02.11

LOGIN: Linda Anderson

IP: 10.24.4.31

Foley & Lardner LLP